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Supreme Court, U.S.
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No. 00-1749

# In the Supreme Court of the United States

NATURAL PARENTS OF J.B.,

*Petitioners,*

v.

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES,

*Respondent.*

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## ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

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12 pp

## QUESTION PRESENTED

Respondent does not agree with the question presented in the Petition. For the reasons discussed *infra* (page 6), Respondent restates the question presented as follows:

> Does a statute which protects the privacy of children by mandating closure of termination of parental rights proceedings violate the parents' right to due process under the Fourteenth Amendment?

## TABLE OF CONTENTS

Question Presented . . . . . i

Table of Authorities . . . . . iii

Statement of the Case . . . . . 1

Reasons for Denying the Writ . . . . . 3

Conclusion . . . . . 7

## TABLE OF AUTHORITIES

*Cases:*

*Barron v. Florida Freedom Newspapers, Inc.*,
531 So. 2d 113 (Fla. 1988) . . . . . 2

*Florida Freedom Newspapers, Inc. v. Simmons*,
508 So. 2d 462 (Fla. 1st DCA 1987) . . . . . 2

*Globe Newspaper Co. v. Superior Court*,
457 U.S. 596 (1982) . . . . . 4,5

*In re Adoption of H.Y.T.*,
458 So. 2d 1127 (Fla. 1984) . . . . . 6

*Lassiter v. Department of Social Services*,
452 U.S. 18 (1981) . . . . . 3

*New Jersey Div. of Youth & Family Servs. v. J.B.*,
576 A.2d 261 (N.J. 1990) . . . . . 6

*Press-Enterprise Co. v. Superior Court*,
464 U.S. 501 (1984) . . . . . 4

*Richmond Newspapers, Inc. v. Virginia*,
448 U.S. 555 (1980) . . . . . 4

*Santosky v. Kramer*, 453 U.S. 745 (1982) . . . . . 3,6

*Schall v. Martin*, 467 U.S. 253 (1984) . . . . . 3,5,6

*Smith v. Daily Mail Co.* 443 U.S. 97 (1979) . . . . . 5

*Florida Statutes (2000):*

§ 20.19 . . . . . 1

§ 29.827 . . . . . 6

§ 39.001 . . . . . 4

§ 39.01 . . . . . 1

§ 39.501 . . . . . 3

§ 39.801 . . . . . 3,6

§ 39.806 . . . . . 4

§ 39.808 . . . . . 6

§ 39.809 . . . . . 6

§ 39.810 . . . . . 4

§ 39.814 . . . . . 4

§ 63.162 . . . . . 6

§ 742.16 . . . . . 6

*Other Authorities:*

Art. I, § 23, Fla. Const. . . . . 2

## STATEMENT OF THE CASE

The Statement of the Case in the Petition is generally accurate;[1] however, several points warrant clarification and expansion.

First, the Petition notes that the parents unsuccessfully sought to close the dependency proceeding, but omits several important details. Pet. at 3. Specifically, the parents argued that it would be against the child's interests if the dependency proceedings were open and they presented testimony of the child's treating psychologist who opined that it was "imperative" that the proceedings be closed. Pet. App. at 28a-29a. Respondent did not oppose the closure of the dependency proceeding. Id. Although the trial court denied the parents' request to close the dependency proceeding, it did so without prejudice to the possible closure of future proceedings in the case. Pet. App. at 29a. After the character of the proceeding changed from dependency to termination of parental rights (TPR), the parents changed their position and sought to have the proceedings opened. Id. There is nothing in the record which would rebut the opinion of the child's psychologist or otherwise indicate that closure of the proceedings is no longer in the child's best interests.

Second, the Petition overstates the positions taken by the two dissenting justices. Pet. at 6. They did not conclude that the statute requiring mandatory closure of TPR proceedings is unconstitutional, only that it "may be constitutionally infirm." Pet. App. at 23a (Pariente, J., concurring) (emphasis

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[1] It should be noted that the pleadings and decisions below do not "misstate the name of the State agency" who is the Respondent herein. Pet. at 1 n.1. The correct name of the agency is the Department of Children and Family Services. *See* §§ 20.19, 39.01(19), Fla. Stat. (2000).

supplied).[2] Moreover, the ellipses in the quotation on page 6 of the Petition omit an important part of the statement as set forth below in bold-faced type:

> [I]n order to pass constitutional muster **under our decision in *Barron*,**[3] the decision to close TPR proceedings should be vested in the sound discretion of the trial court on a case-by-case basis, . . . .

Pet. App. at 26a (emphasis and footnote supplied). *Barron* involved the dissolution of a marriage without minor children. 531 So. 2d at 114. The court in that case did not expressly discuss the First or Fourteenth Amendment; instead the court focused on a balancing of the common law tradition of open trials with the right of privacy in the Florida Constitution.[4] *See id. And see Florida Freedom Newspapers, Inc. v. Simmons*, 508 So. 2d 462, 465 (Fla. 1st DCA 1987) (Nimmons, J., concurring in result) ("We need not decide whether the First Amendment is applicable in the closure of civil cases."), *approved sub nom Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988).

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[2] Indeed, Justice Anstead would have avoided the constitutional issue altogether by "construi[ing] the statute as creating a presumption in favor of closure, while still permitting courts to determine access on a case-by-case basis." Pet. App. at 22a. And see id. at 14a.

[3] *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988).

[4] *See* art. I, § 23, Fla. Const. ("Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. . . . .").

## REASONS FOR DENYING THE WRIT

The Petition should be denied because it does not present an important, unsettled federal question that was decided by the Florida Supreme Court in a way that conflicts with decisions of this Court, the federal courts of appeal, or another state court of last resort. The Florida Supreme Court's decision is consistent with this Court's precedent and it should not be disturbed. As the Florida Supreme Court recognized, civil proceedings involving juveniles "have historically been closed to the public" (Pet. App. at 6a-8a) and Petitioners' continued reliance on the historical openness of criminal and non-juvenile civil proceedings is therefore misplaced.

This is a juvenile case.[5] It arises out of the State of Florida's efforts to ensure the care, safety and protection of the child, J.B., through its juvenile justice system.[6] This Court has consistently recognized that the foundation of the juvenile justice system is preservation of the welfare of the child in light of the State's *parens patriae* interest in its children. *See, e.g., Schall v. Martin*, 467 U.S. 253, 263 (1984) (citing *Santosky v.*

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[5] Petitioners' efforts to analogize this case to a criminal case are misplaced. Pet. at 7. As Justice Berger noted in *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981):

> The purpose of the termination proceeding at issue here was not "punitive." On the contrary, its purpose was *protective* of the child's best interests.

*Id.* at 34 (Burger, J., concurring) (italics original and citations omitted).

[6] The TPR case and the dependency case which preceded it were brought under chapter 39, Florida Statutes, which is entitled "proceedings related to children." Proceedings under chapter 39 are governed by the Florida Rules of Juvenile Procedure promulgated by the Florida Supreme Court. *See* §§ 39.501(3)(b) (dependency cases), 39.801(1) (TPR cases), Fla. Stat. (2000).

*Kramer*, 455 U.S. 745 (1982)).

The purpose of TPR proceedings in Florida is likewise to ensure the best interests of the child. *See* § 39.810, Fla. Stat. (2000) ("In a hearing on a petition for termination of parental rights, the court shall consider the manifest best interests of the child"). *Accord id.* at § 39.001(1)(b)1. ("The health and safety of the children served [by the State's child protection system] shall be of paramount concern."). The statute mandating closure of TPR hearings promotes that interest by protecting the child from further psychological and emotional harm which might result from the public disclosure of the sensitive information which is necessarily part of a TPR hearing. *See* § 39.806, Fla. Stat. (2000) (listing the grounds for terminating parental rights, including sexual and other abuse, neglect, etc.). *And cf.* § 39.814, Fla. Stat. (2000) (providing for confidentiality of court records in TPR cases). In light of the tradition of closed juvenile proceedings, it was within the province of the Florida Legislature to balance the competing interests and determine that the interests of the child far outweighed those of the parents and therefore mandate closure of TPR hearings.[7]

The cases cited by Petitioners in support of "the broad principle of openness of judicial proceedings articulated by this Court" are inapplicable.[8] Each of those cases arose out of a criminal proceeding. As Justice O'Conner stated in her

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[7] The legislative balancing is evident in section 39.001(1)(l) (recognizing and assuring consideration of the parents' rights) and section 39.001(1)(a)-(b) (discussing the paramountcy of the child's best interest).

[8] Pet. at 11 (citing *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984), *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982), and *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)).

concurring opinion in *Globe Newspaper Corp.*, "I interpret neither *Richmond Newspapers* nor the Court's decision today to carry any implications outside of the contest of criminal trials." 457 U.S. at 611. More specifically, it does not appear that the principle has implications beyond adult criminal proceedings as the Court has consistently discussed the importance of confidentiality in juvenile proceedings, including quasi-criminal juvenile delinquency proceedings. *See, e.g., Smith v. Daily Mail Pub. Co.*, 443 U.S. 97 (1979):

> It is a hallmark of our juvenile justice system in the United States that virtually from its inception at the end of the last century its proceedings have been conducted outside of the public's full gaze and the youths brought before our juvenile courts have been shielded from publicity. This insistence on confidentiality is born of a tender concern for the welfare of the child, to hide his youthful errors and "bury them in the graveyard of the forgotten past."

*Id.* at 107 (Rehnquist, J., concurring) (citations omitted). *And see Schall*, 467 U.S. at 263 (noting that "a juvenile proceeding fundamentally different from an adult criminal trial").

Petitioners also assert that review of the Florida Supreme Court's decision is necessary because the Florida statute at issue is "the minority view among the states."[9] Pet. at 9. This

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[9] The statute at issue in this case is consistent with the public policy expressed by the Florida Legislature in other statutes which mandate closure of judicial proceedings involving children. *See, e.g.*, §§ 63.162 (adoption proceedings), 742.16 (parental status in cases involving gestational surrogacy), 29.827 (hearings for appointment of guardians ad litem). The Florida Supreme Court upheld the mandatory closure of adoption proceedings in *In re Adoption of H.Y.T.*, 458 So. 2d 1127 (Fla. 1984).

factor is certainly not determinative, *see, e.g., Schall*, 467 U.S. at 268, and in any event the Florida statute is consistent with the majority view that there is no presumptive right of access to TPR proceedings. See Pet. at 10 (citing only 13 states in which TPR hearings are presumptively open). The differing statutes across the nation demonstrates that the issue is best left to the state legislative bodies. Indeed, the only case cited by Petitioners in support of their contention that "the state courts are divided" on the question presented arose in a state where the legislative body has not adopted a statute governing access to TPR proceedings. *See* Pet. at 9 (citing *New Jersey Div. of Youth & Family Servs. v. J.B.*, 576 A.2d 261, 266 (N.J. 1990)); *and see* Pet. at 10 n.9 (listing New Jersey as a state which has not statutorily addressed access to TPR proceedings). Thus, any conflict in that decision and the decision of the Florida Supreme Court in this case is, at most, indirect.

Finally, this is not a case where the press or a member of the general public is seeking access to a statutorily closed proceeding. The only parties to this case are the parents, and they clearly have a right of access to the TPR proceeding. *See* §§ 39.801(3), 39.808, 39.809, Fla. Stat. (2000). The First Amendment right of access which the Petition seeks to vindicate is that of the general public. In contrast, the only question fairly presented by the parents is whether the mandatory closure of the TPR proceedings is "fundamentally fair." *See Santosky, supra.* Accordingly, if the Court grants the Petition notwithstanding the foregoing argument, it should do so based upon the restated question presented herein.

## CONCLUSION

The petition for writ of certiorari should be denied.

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